

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

VERNELL WHITE,

Petitioner,

V.

ROB ST ANDRE, Warden,

Respondent.

Case No. 8:24-cv-02678-SVW-SSC

**ORDER DISMISSING ACTION
WITHOUT PREJUDICE**

On December 9, 2024, *pro se* Petitioner Vernell White filed this habeas action pursuant to 28 U.S.C. § 2254. (ECF 1.) On February 14, 2025, Respondent filed a motion to dismiss the petition, arguing, in part, that the petition should be dismissed pursuant to the abstention rule of *Younger v. Harris*, 401 U.S. 37, 45–46 (1971) because Petitioner has a pending state appeal. (ECF 8.) On April 2, 2025, Petitioner filed a request to withdraw the petition without prejudice. (ECF 11.)

Under Rule 41 of the Federal Rules of Civil Procedure, a petitioner may voluntarily dismiss a case without a court order before the respondent has served an answer or motion for summary judgment. Fed. R. Civ. P. 41(a)(1)(A)(i). Voluntary dismissal under Rule 41(a)(1)(A)(i) remains available where, as here, the respondent has filed

only a motion to dismiss the petition. See *Murray v. Pollard*, No. CV 20-8775-RGK (JEM), 2021 WL 5969306, at *17 (C.D. Cal. Nov. 8, 2021) (voluntary dismissal under Rule 41(a)(1), rather than court-ordered dismissal under Rule 41(a)(2), applies in § 2254 action where respondent has filed a motion to dismiss but not an answer or motion for summary judgment), *report and recommendation adopted*, No. CV 20-8775 RGK (JEM), 2021 WL 5968409 (C.D. Cal. Dec. 16, 2021); *Fulcher v. Hatton*, No. 16cv2041-BAS-BGS, 2017 WL 663564, at *1 (S.D. Cal. Jan. 31, 2017) (same), *report and recommendation adopted*, No. 16-cv-02041-BAS-BGS, 2017 WL 661596 (S.D. Cal. Feb. 17, 2017). Unless a petitioner requests otherwise, or has previously dismissed the same claim(s), a voluntary dismissal under Rule 41(a)(1)(A)(i) shall be without prejudice. Fed. R. Civ. P. 41(a)(1)(B).

14 Because Respondent has not filed an answer or motion for
15 summary judgment, the Court construes Petitioner’s request to
16 withdraw the petition as a notice of voluntary dismissal without
17 prejudice pursuant to Rule 41(a)(1)(A)(i). Accordingly, as Petitioner
18 requests dismissal of this action without prejudice, and this appears to
19 be the first time that Petitioner has dismissed these claims, this action
20 is dismissed without prejudice.¹ *Id.*

22 | DATED: April 24, 2025

HONORABLE STEPHEN V. WILSON
UNITED STATES DISTRICT JUDGE

¹ Even if, in light of Respondent's motion to dismiss, Petitioner must obtain a Court order pursuant to Rule 41(a)(2) to dismiss this action, dismissal is warranted here and such dismissal shall be without prejudice. See Fed. R. Civ. P. 41(a)(2) ("Unless the order states otherwise, a dismissal under this [subsection] is without prejudice.").